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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,274	10/03/2005	John Alan Eggleden	118771.00103	8494

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BLANK ROME LLP  
600 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, DC 20037

EXAMINER
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LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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01/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,274	<b>Applicant(s)</b> EGGLEDEN, JOHN ALAN	
	<b>Examiner</b> Huyen Le	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gebhard (5,186,563) in view of Nagata et al (5,573,129).

The Gebhard reference discloses a fluid dispenser comprising a bellows 42, an upstanding open-ended neck portion 45 with external threads, the bellows having a plurality of vertically spaced ring-shaped outer fold-lines, a plurality of vertically spaced inner ring-shaped fold-lines of smaller diameter than that of the outer fold-lines and each positioned at a height generally midway between each pair of outer fold-lines; and annular webs extending between neighboring inner and outer fold-lines.

Although Gebhard does not disclose the dispenser extruded from a low density polyethylene material, the mean thickness of the webs between 0.4 to 1.5 mm, the height of the dispenser between 55 and 85 mm, the weight of the dispenser between 10 and 17.5 grams, the mean thickness of the outer fold-lines and the inner fold-lines, and the ratio of the thicknesses of the inner and outer fold-lines being within 1.5:1 and 2.5:1, attention is directed to the Nagata et al reference (Fig. 10) which teaches a fluid dispenser having a bellows having a ratio of the thicknesses of the inner and outer fold lines being in the range as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a bellows in the Gebhard dispenser having ratio of thicknesses of the inner and outer fold-lines within a certain range in view of the teaching of Nagata et al and further having a mean thickness, height, weight, and within a certain range to best fit a particular dispenser design and to optimize the performance. See In re Aller, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art. Regarding the material made of the dispenser, selecting a known material on the basis of its suitability for the intended use would be a mere matter of obvious design choice.

Regarding claim 6, the upper open end of the neck 45 is closed by a cap 12 with internal threads.

Regarding claim 7, the tube 20 is provided within the cap 12.

3. Claims 1-4, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorber (3,357,395) in view of Nagata et al.

The Lorber reference discloses a fluid dispenser comprising a bellows 1, a neck 2 closed by a cap 3 on which is mounted an absorbent pad 7 formed with a dome shaped outer surface, the cap including an aperture 6 through which fluid can flow to the pad 7 when the bellows 1 is depressed, the bellows 1 having a plurality of vertically spaced ring-shaped outer fold-lines, a plurality of vertically spaced inner ring-shaped fold-lines of smaller diameter than that of the outer fold-lines and each positioned at a height generally midway between each pair of outer fold-lines; and annular webs extending between neighboring inner and outer fold-lines.

Although Lorber does not disclose the dispenser extruded from a low density polyethylene material, the mean thickness of the webs between 0.4 to 1.5 mm, the height of the dispenser between 55 and 85 mm, the weight of the dispenser between 10 and 17.5 grams, the mean thickness of the outer fold-lines and the inner fold-lines, and the ratio of the thicknesses of the inner and outer fold-lines, attention is directed to the Nagata et al reference (Fig. 10) which teaches a fluid dispenser having a bellows having a ratio of the thicknesses of the inner an outer fold lines being in the range as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a bellows in the Lorber dispenser having ratio of thicknesses of the inner and outer fold-lines within a certain range in view of the teaching of Nagata et al and further having a mean thickness, height, weight, and within a certain range to best fit a particular dispenser design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art. Regarding the material made of the dispenser, selecting a known material on the basis of its suitability for the intended use would be a mere matter of obvious design choice.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.
5. Applicant's arguments filed 05/22/2007 have been fully considered but they are not persuasive. Regarding applicant's arguments that the container in Gebhard does not act as a bellows because it does not return substantially to its original side once

hand pressure is released as claimed, examiner disagrees with applicant. The container in Gebhard includes a bellows which is capable of returning to its original size when pressure is released (see col. 4, lines 5-10 and 15-18).

6. Gebhard discloses all claimed features except the thickness of the web of the bellows, the height of the dispenser and the weight of the dispenser. The optimum thickness, the height and weight of the dispenser have no patentable weight. The optimization of these dimensions would have been an obvious design choice to one of ordinary skill in the art.

***Allowable Subject Matter***

7. Claim 8 is allowed.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/526,274  
Art Unit: 3751

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Huyen Le  
Primary Examiner  
Art Unit 3751

HL